

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
SECRETARIAT

In the matters of

American Federation of Labor and
Congress of Industrial Organizations, *et al.*

MURs 4291, *et al.*

2000 JUN 12 A 11: 23

SENSITIVE

GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

Take no further action and close the files with respect to all respondents except for the Democratic Republican Independent Voter Education Committee and C. Thomas Keegel, as treasurer; approve appropriate letters, including an admonishment to one authorized committee and its treasurer.

II. INTRODUCTION

These matters were generated by eleven separate complaints filed by various complainants between December, 1995 and November, 1996. The complaints involved several issues. However, the complaints had a common theme. They alleged that the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), or certain of its affiliated national and international unions and state or local central bodies, had coordinated election-related communications to the general public with certain candidates for Federal office in the 1996 election cycle or their authorized committees, or with political party committees. The coordination, it was alleged, rendered the communications in-kind contributions, which would violate 2 U.S.C. § 441b(a) if the communications were paid for with money from the general treasuries of labor organizations.

The First General Counsel's Report dated April 29, 1997 reviewed various facts and allegations set forth in the complaints, and in other publicly available material such as news accounts. In that report, this Office advised the Commission that the various discrete scenarios described in the report appeared to have been part of a program of political activity in the 1996 election cycle that was paid for with as much as \$35 million of AFL-CIO general treasury funds. Accordingly, the First General Counsel's Report indicated, if the Commission approved investigation of these matters, the investigation would not be limited to any specific facts found in the complaints or elsewhere but would instead investigate whether there was a pattern and practice of coordination between the AFL-CIO and its affiliates, on the one hand, and Democratic candidates for Federal office or national party committees of the Democratic Party, on the other.

After considering the First General Counsel's Report and the recommendations therein, the Commission, on June 17, 1997, found reason to believe that the AFL-CIO and several potential recipient committees violated 2 U.S.C. § 441b(a).¹ On the same date, the Commission determined to take no action at that time with respect to several other respondents, leaving the files open as to those respondents; among these respondents were John J. Sweeney, as president of the AFL-CIO, Richard L. Trumka, as secretary-treasurer of the AFL-CIO, and Steve Rosenthal, as political director of the AFL-CIO. Pursuant to the reason to believe findings, an investigation ensued.

¹ Because of a procedural defect in service of a complaint and an amendment to a complaint, the Commission, on September 9, 1997, rescinded its finding that the AFL-CIO violated 2 U.S.C. § 441b(a) solely as it pertained to the complaints in MURs 4291 and 4328. After the procedural defects were cured, the Commission, on February 13, 1998, once again found reason to believe that the AFL-CIO had violated 2 U.S.C. § 441b(a) in MURs 4291 and 4328.

The investigation has developed evidence, which will be discussed herein, that national and state committees of the Democratic Party² provided the AFL-CIO or its state affiliates nearly total access to their plans, projects, activities, and needs, at least with respect to a major project in each state known as the "Coordinated Campaign." However, with relatively minor exceptions, the investigation has developed no evidence of any instance in which the AFL-CIO made any communication to the general public after coordination with a recipient candidate or party committee that meets the standard for coordination set forth in *FEC v. The Christian Coalition*, 52 F. Supp.2d 45 (D.D.C. 1999). In the instance that came closest, which involves contacts between the AFL-CIO and the White House about an AFL-CIO advertisement broadcast in December, 1995, any coordination appears to have been with representatives of a candidate in an election other than those elections with which the advertisement was apparently in connection.

This report is intended to inform the Commission of the findings and status of the investigation to date and to evaluate the most significant evidence in hand under the *Christian Coalition* standard. Based on that evaluation, this Office recommends that the Commission take no further action and close the file with respect to all respondents except two. Those two, the Democratic-Republican-Independent Voter Education Committee ("DRIVE") and C. Thomas Keegel, as treasurer, have already been the subject of a probable cause to believe finding by the Commission regarding a reporting violation.

² While the DNC Services Corp./Democratic National Committee ("DNC"), the Democratic Senatorial Campaign Committee ("DSCC"), and the Democratic Congressional Campaign Committee ("DCCC") and their treasurers are respondents in these matters, no state Democratic committee or its treasurer is at this time a respondent in any of these matters.

II. BACKGROUND: THE EXTENT OF THE AFL-CIO'S ELECTION-RELATED ACTIVITIES IN 1996

One of the investigation's first goals was to determine the extent of the AFL-CIO's 1996 political program, which it generally referred to as "Labor '96." Information developed in the investigation supported the First General Counsel's Report's description of the AFL-CIO's program as divided into a broadcast advertising component and a "field" component.

1. The Broadcast Component

Between December, 1995 and May, 1996, the AFL-CIO broadcast four "flights" of television and radio advertisements and one flight of advertisements that was composed solely of radio advertisements. At least 45 Republican Members of the House of Representatives and two Democratic Members of the House of Representatives were the subject of at least one of the advertisements; 12 Members, all Republicans, were targeted in all five "flights." The content of the December 1995 and January 1996 advertisements, as discussed in more detail *infra* and as reproduced at Attachments 1 and 2 of the April, 1997 First General Counsel's Report, focused on the struggle between the President and Congress over the Fiscal Year 1996 budget reconciliation and appropriations legislation, and the ensuing protracted shutdowns of the Federal government. The advertisements were broadcast during periods of intensive action on the legislation. The content of the three flights of advertisements broadcast during April and May, 1996 focused on legislation to increase the minimum wage. First General Counsel's Report, Attachments 6 and 7; MS&R Bates Nos. 02022 through 02024 (Attachment 1 to this report). As with the advertisements about the budget, the advertisements were broadcast concurrent with intensive legislative action. In both the budget advertisements and the minimum wage advertisements, the

scripts were uniformly critical of votes the targeted Member had taken on the legislation at issue, and urged the viewer to call the targeted member and tell him to "stand up for working families," or similar language. Each advertising "flight" appears to have been created from a template script that was turned into multiple versions of the advertisement, each version naming different Members of Congress. The investigation has not as yet developed comprehensive information showing the amount of money spent on these advertisements by the AFL-CIO, or the advertisements' frequency in terms of gross ratings points purchased per district.

The five flights between December 1995 and May 1996 were both created and placed for the AFL-CIO by the firm of Greer, Margolis, Mitchell, Burns & Associates. However, beginning in June, 1996, time for the AFL-CIO's broadcast advertisements was purchased by the firm of Media Strategies & Research, Inc.

Between the end of June, 1996 and the November election, the AFL-CIO broadcast radio or television advertisements that were arguably related to at least 40 elections for U.S. Representative and four elections for U.S. Senator. Thirty-four of the 40 targeted House districts had also been the target of at least one of the "flights" broadcast in the earlier December-May period. While the documents produced so far do not clearly indicate the cost of producing the advertisements, the AFL-CIO appears to have spent slightly more than \$20 million on the air time for the advertisements.

These advertisements appear to have taken two basic forms. In the nine flights broadcast between late June and mid-September, 1996, the advertisements would criticize the incumbent member of Congress named therein, frequently in harsh terms, about his or her record on the issue that was the subject of the advertisement. However, with the exception of a flight of

advertisements on the topic of the minimum wage that aired in late June and early July, 1996, there was no clear connection between the content of the advertisements and any legislation that was then the subject of intensive legislative action at the time of the advertisements. The targets of these advertisements were uniformly both Republicans and incumbents. In the eight flights that began in late September and continued through election day, the advertisements took the form of so-called "electronic voter guides," comparing the Republican incumbent and the Democratic challenger (or the Republican and Democratic nominees, in the cases of open seats) on a particular issue; the Democratic candidate's record was uniformly presented more favorably than the Republican candidate's.³ The scripts of both kinds of advertisements appeared to have been carefully designed to avoid "express advocacy" of the election or defeat of any candidate; the advertisements broadcast from June through September, like the earlier advertisements, provide an "800" number and urge the viewer to "tell Congressman [x]" various messages. The voter guide advertisements provide an "888" number and state that "when it comes to [the issue the ad is about], there is a difference. Call and find out."⁴

Not every "target" of the advertising campaign was targeted in each advertising flight; some "targets" appear to have been added to, or removed from, the campaign as time went on. No candidate appeared to have been targeted in each flight; 13 candidates appear to have been targeted in as many as ten flights apiece in the period between June and November.

³ Examples of both types of advertisement are attached to the First General Counsel's Report dated April 29, 1997.

⁴ Viewers who called the number received a printed voter guide in the mail; the printed voter guide similarly did not contain express advocacy.

2. The Field Component

In addition to the broadcast advertisements, there appears to have been a "field" component to "Labor '96." The investigation to date has not been as successful in determining the extent of the field activities as it has in determining the extent of the broadcast activities. Nevertheless, documents produced by the AFL-CIO, and other materials in the Commission's possession, indicate that the AFL-CIO engaged in the provision of printed leaflets and voter guides to members of the general public and engaged in voter registration and get-out-the-vote ("GOTV") activities directed to members of the general public in connection with the 1996 Federal elections. The AFL-CIO also appears to have provided its local affiliates with printed materials designed to assist them in staging press conferences and other "earned media" events in support of the broadcast advertising campaigns. Moreover, an AFL-CIO "Labor '96" training manual produced to the Commission by the DNC Services Corp./Democratic National Committee ("DNC") indicates that the AFL-CIO engaged in voter registration drives, GOTV drives, phone banking, canvassing, voter identification, and voter file development and maintenance activities with respect to members of its restricted class in connection with the 1996 Federal elections.

III. FURTHER BACKGROUND: THE DEFINITION OF "COORDINATION" AND THE THEORY OF THE CASE

In June, 1997, when the Commission made reason to believe findings in these matters, the Commission took the position that coordination sufficient to taint the independence of an expenditure could come about as a result of either a "general or particular understanding." *Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 614 (1996). From that position, the Commission emphasized in a series of enforcement matters that "the passing of any

information about a candidate or party committee's plans, projects or needs from the committee to an expending person may trigger a conclusion of coordination.

Accordingly, the investigation sought evidence pertaining to either "general understandings" or "particular understandings" between the AFL-CIO and the potential recipient committees, with a particular focus on the passing of any information from any potential recipient committee to the AFL-CIO about the committee's plans, projects, activities or needs. At a relatively early point in the investigation, the Democratic "Coordinated Campaigns," which are discussed in more detail below, became the largest single focus of discovery efforts, and they remained so through the latter part of 1999. The "Coordinated Campaign" planning process that was described in certain documents produced by the DNC seemed to offer myriad opportunities for both general and specific coordination. Both the individual state AFL-CIO federations and AFL-CIO headquarters itself apparently had not merely access to, but authority to approve or disapprove the plans, projects and needs of the DNC and its state parties with respect to the Coordinated Campaigns. Moreover, it appeared that if the AFL-CIO participated in the Coordinated Campaign approval process at both the state and national levels to the degree

described in the documents, it could not help but learn the plans, projects and needs of some Democratic nominees for Federal office, the Democratic Senatorial Campaign Committee ("DSCC,") and the Democratic Congressional Campaign Committee ("DCCC").

On August 2, 1999, while this investigation was ongoing, the United States District Court for the District of Columbia issued its opinion in *FEC v. The Christian Coalition*, 52 F. Supp.2d 45 (D.D.C.1999), and on September 22, 1999, the Commission decided not to appeal.

In the *Christian Coalition* decision, the court rejected the assertion that "express advocacy" was required for coordinated expenditures to be considered contributions. *Christian Coalition*, 52 F. Supp.2d at 87. The district court stated that "importing the 'express advocacy' standard into § 441b's contribution prohibition would misread *Buckley v. Valeo*, 424 U.S. 1 (1976)) and collapse the distinction between contributions and independent expenditures in such a way as to give short shrift to the government's compelling interest in preventing real and perceived corruption that can flow from large campaign contributions." *Christian Coalition*, 45 F. Supp.2d at 88.

The court went on to discuss two general ways in which coordination could occur. First, it found that "expressive coordinated expenditures made at the request or the suggestion of the candidate or an authorized agent" would be considered coordinated, holding that this portion of the FEC's approach [taken from Section 431(17) of the statute] was "narrowly tailored." *Christian Coalition*, 52 F. Supp.2d at 91. The court reasoned that the "fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions." *Christian Coalition*, 52 F. Supp.2d at 92.

Second, the court ruled that absent a request or suggestion, "an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) contents; (2) timing; (3) location, mode, or intended audience (e.g. choice between newspaper or radio advertisement); or (4) 'volume' (e.g., number of copies of printed materials or frequency of media spots)." *Christian Coalition*, 52 F. Supp.2d at 92.⁵

The court also discussed what it termed the " 'insider trading' or conspiracy standard" of coordination. Specifically, the court addressed to what extent contacts or ties between an expender and a campaign, such as the fact that an individual worked for the expender and the campaign and was privy to non-public information, give rise to an inference that there was coordination with respect to the expressive expenditures by the expender. *Christian Coalition*, 52 F. Supp.2d at 89-97. The court found that such contacts or ties alone would not be sufficient to establish coordination unless there was also evidence of "discussion or negotiation" regarding the expenditures. The court also found that coordination might be established if an individual had a certain level of decision-making authority for both the spender and the campaign and the spender made the expressive expenditures to assist the campaign. *Id.* at 96-97.

⁵ Two other recent district court decisions addressed coordination issues. In *FEC v. Public Citizen, Inc.*, Civ. Action No. 1:97-cv-358-RWS (N.D.Ga. September 15, 1999), the court found, among other things, that the communications between the independent spender and the candidate "did not rise to the level of consultation or coordination between the parties." *Id.* at 16. The Commission did not include the coordination issue in its appeal of the *Public Citizen* decision.

In *FEC v. Freedom's Heritage Forum, et al.*, Civ. Action No. 3:98cv-549-S (W.D. Ky. September 29, 1999), the court found that in one instance in which coordination was charged there was no allegation that the information was provided by the candidate "with a view towards having an expenditure made," and, in another instance of charged coordination, the court found no allegation that the expenditures were made "at the request or suggestion" of the candidate. Memo. Op at 4.

In devising its legal standard for coordination, the Court drew a distinction between "‘expressive,’ ‘communicative’ or ‘speech-laden’ coordinated expenditures " at issue in that case, which are subject to the highest form of First Amendment protection, and "non-communicative materials" or situations in which the spender finances materials for a candidate's campaign. *Christian Coalition*, 52 F. Supp.2d at 85, fn. 45. The court made explicit that its standard only applied to expressive coordinated expenditures. *Id.* at 91.

Finally, the district court recognized that discovery in coordination cases is "a necessarily fact-intensive inquiry allowing for extensive FEC inquiry into the nature and extent of communications between the alleged contributor and the campaign." *Christian Coalition*, 52 F. Supp.2d at 88.

After the Commission determined not to appeal the *Christian Coalition* decision, this Office determined to proceed in these matters by completing review of those documents that were in-house at that time and then evaluating the facts developed under the *Christian Coalition* standard. That evaluation is the focus of this report.⁶ The various strands of the investigation described below are discussed in roughly the order of their importance to the investigation to date, with the strands on which the greatest amount of investigative resources have been devoted

⁶ The investigation to date has entailed, among other things, review of roughly 35,000 pages of documents. The largest single producer of documents among those 35,000 pages was the DNC. An estimated 10,000 to 20,000 pages of additional documents was produced by the DNC after the decision was made to evaluate what had been reviewed to date under the *Christian Coalition* standard. This Office did not review the additional documents because it believed that the balance of the documents deal with the Coordinated Campaign and the AFL-CIO's participation in it and, for the reasons stated herein, it appears that further review of Coordinated Campaign materials is not likely to produce evidence of coordination as defined in *Christian Coalition*. Should the Commission reject the recommendations made herein and direct the investigation to continue – especially that strand of the investigation that focuses on the Coordinated Campaign – the first task this Office will face will be completion of the review of these documents.

addressed first and the strands to which the least amount of investigative resources have been devoted addressed last.

IV. THE "COORDINATED CAMPAIGN"

A. Facts

The Democratic National Committee's 1996 "Coordinated Campaign" was a collection of "separate statewide campaign structure[s] within each state Democratic party [that was] created and [partially] financed" by Democratic nominees and officeholders and allied organizations in each state; partially financed by the DNC and national allied organizations such as the AFL-CIO, the National Education Association ("NEA") and Emily's List; and operated under "ground rules" set forth by the DNC. Attachment 3 (FEC Bates No. AFL018-00269).⁷ The statewide "Coordinated Campaigns" engaged in a variety of field activities and were apparently intended to centralize Democratic voter identification and GOTV efforts within each state or subdivisions thereof, thereby eliminating duplication of effort between Democratic campaigns for different offices in the same geographic jurisdictions and enhancing the party committees' ability to take maximum advantage of the Commission's regulations concerning allocation of expenses between Federal and non-Federal candidates.

A DNC document entitled "The Coordinated Campaign," (Attachment 4), DNC Bates Nos. 1272516 through 1272574, set forth "Rules of Engagement." *Id.* at 1272523. These included a requirement that "Every state must have a written Coordinated Campaign plan." *Id.* at 1272524. Each state party was also required to establish a "Steering Committee" that would

⁷ The term "Coordinated Campaign" apparently referred to "coordination" not in the sense used in federal campaign finance law, but in the sense of coordination of activities between Democratic federal and nonfederal candidates up and down the ballot.

include state- or local-level representatives of "each major candidate on the ballot," including a representative of "The Presidential Campaign," and "out-of-cycle elected officials, the AFL-CIO, the NEA, and in some cases, allied organizations and constituency groups such as EMILY's List, when each makes a programmatic and financial commitment to the Coordinated Campaign Effort." *Id.* at 1272525. The Steering Committee was to be "the central governing body of the Coordinated Campaign" within the state, and "[e]ach member" was to "have a voice in Coordinated Campaign programs and financial line-items based on their overall commitment to funding and implementation of the plan." *Id.* at 1272526.

Moreover, each state plan had to be formally approved by the DNC in order to be implemented. *Id.* at 1272527. "For a plan to be formally considered for approval in Washington, it must be submitted with a signature page which demonstrates the formal sign-off of the principal players for each representative of the Steering Committee of the Coordinated Campaign." *Id.* The "Rules of Engagement" also provided for a national-level approval process that mirrored the state structure:

[I]f the plan meets the DNC's specifications, it is shared with the National Coordinated Campaign funding partners at the AFL-CIO, NEA, EMILY's List (in some cases), and the other National Campaign Committees for review. When the DNC and it's [sic] National partners including the DSCC/DCCC/DGA/DLCC and the AFL-CIO and the NEA agree on the contents of a plan, each national partner will give their funding commitment to the state.

Id.

Each of the individual state coordinated campaign plans appear to have generally followed the "Rules of Engagement" set forth by the DNC.⁸ Moreover, it appears that that the

⁸ With a handful of exceptions, the state Coordinated Campaign plans, which were produced in discovery by the DNC, bore the signatures of AFL-CIO state federation personnel, signifying the state federation's approval of the plan.

AFL-CIO obtained a considerable amount of information about the plans, projects and needs of the DNC, the state parties, and, in some instances, candidates, through the Coordinated Campaign process.

For instance, in a memorandum dated September 23, 1996, Indiana Democratic Party Political Director Steve Rogers memorialized an earlier telephone conversation he had with Jim Thompson of the AFL-CIO's Political Department. "As we discussed," Rogers wrote, "all parties involved in the coordinated campaign, including the O'Bannon campaign, the Weinapfel [sic] campaign, and the Carson campaign agree that a voter contact program in central and southwestern Indiana would be a vital element in helping all Democratic candidates win." Attachment 5 (FEC Bates No. AFL048-00857, 00858). Weinapfel was the Democratic nominee for U.S. Representative in Indiana's Eighth Congressional District in southwestern Indiana, and Carson was the Democratic nominee in the Tenth District in central Indiana;⁹ the Eighth District was one of the districts in which the AFL-CIO ran ten flights of broadcast advertisements between June 27 and election day. Attached to Rogers's memorandum were sheets apparently detailing to the voter and the dollar the Indiana Democratic Party's plans for phone banking and direct mail activity in the two congressional districts.

Similarly, a September 12, 1996 memorandum from Rob Engel of the DCCC to Thompson provided a similar level of detail regarding phone calls and direct mail for voter identification and GOTV efforts "in ten states (16 target CD's) where the DNC delegated coordinated campaign responsibility to the DCCC and where we have target races." Attachment 6 (FEC Bates No. AFL048-00675). The AFL-CIO ran broadcast advertisements in five of the 16

⁹ O'Bannon was the Democratic nominee for Governor of Indiana.

districts, and ran "electronic voter guide" commercials, which were the ones aired closest to the election, in four of them.¹⁰

Many of the plans themselves, which were supposed to be submitted to the AFL-CIO for approval, contained a great deal of detail about the plans, projects, and needs of the Coordinated Campaign in the individual state. For instance, a document that appears to be part of the Michigan Coordinated Campaign Plan contains specific plans for absentee voting, canvassing, "visibility" (i.e., bumper stickers, yard signs, etc.), phone banking and direct mail activities for each Congressional district in the state. Attachment 7 (DNC Bates Nos. 4629589 through 4629611). In another example, the Arkansas Coordinated Campaign Plan specifies the number of African American and women voters to be contacted by telephone statewide, and the ten counties on which "the campaign will concentrate." Attachment 8 (DNC Bates No. 4628584, 4628588). In Idaho, where the state party asserted that "every dollar available should be devoted to the persuasion of voters," Attachment 9 (FEC Bates No. AFL041-00271, 00273), the Coordinated Campaign Plan described plans for, among other things, two 65,000 piece mailings to women voters in the First Congressional District contrasting the positions of Democratic House nominee Dan Williams and Republican incumbent Helen Chenoweth on issues to be determined later; a 110,000 piece mailing criticizing "Idaho's Republican congressional delegation" for, among other things, voting "to gut . . . student loan programs," an issue on which the AFL-CIO was later to run television ads criticizing Chenoweth; and an 80,000 piece mailing to senior citizens "noting that Idaho Republicans Craig, Chenoweth and Crapo voted to cut Medicare for seniors in order to pay for a tax cut for the wealthiest Americans and the largest

¹⁰ The five districts were: Arizona-6, Indiana-8, Kansas-4, Montana-AL and Nebraska-2. The "electronic voter guides" aired in all except Kansas-4.

corporations," an issue on which the AFL-CIO either had or was going to run ads criticizing Chenoweth. *Id.* at 00276. And in South Dakota, the Coordinated Campaign Plan called for the following actions:

-- Establish a statewide [labor] steering committee of 6-10 people. Paul Aylward [of the South Dakota American Federation of State, County and Municipal Employees] will serve as Chairperson.

--Field Coordinators, with input from the steering committee, will organize labor county coordinators in the A-targeted counties. County coordinators will be in place by May 1.

--The Field Coordinators [will] identify every CAP and COPE member of each international [union]

--Local Labor leaders and the Coordinated Campaign Director will communicate our financial needs to the international

--The Labor steering committee will have direct input into the GOTV plan.

Attachment 10 (DNC Bates No. 4630330, 4630337).

However, none of the documents cited, nor any other documents this Office has reviewed to date related to the Coordinated Campaign, make any unmistakable reference to, much less request or suggest, any specific communications by the AFL-CIO to the general public. Where the Coordinated Campaign plans referred to communications to the general public, they referred to the state parties' plans for their *own* communications to the general public.

Moreover, the investigation has developed no evidence that the AFL-CIO used its apparent veto power over the state Coordinated Campaign plans in any manner that had anything to do with AFL-CIO communications to the general public. In fact, a September 10, 1996 memorandum from DNC official David Billy to the AFL-CIO's Jim Thompson and Tom Lindenfeld would appear to indicate the contrary. The memorandum memorialized a discussion the previous evening between Billy, Thompson, and Lindenfeld in which various state

coordinated campaign plans were reviewed and in which, apparently, the AFL-CIO approved some and disapproved others. Various problems were mentioned with the disapproved plans, such as "no labor representation on Executive Committee," "too much phones, very little mail," and "staffing problem." However, the only problem that even hints at a concern about conflict with the AFL-CIO's activities is in the cryptic notation under "Wisconsin" that reads, "Overlap with State Federation plan?" Attachment 11 (FEC Bates No. AFL048-00783 through 00787). There does not appear to have been significant AFL-CIO broadcast advertising activity in Wisconsin.

There were frequent requests made of the AFL-CIO by the state parties, the DNC or the DCCC, but none of the requests were for communications to the general public. Instead, with few exceptions the requests were that the AFL-CIO contribute, or persuade its affiliated international unions to contribute, either "hard" or "soft" money, usually directly to the state parties, for the conduct of the Coordinated Campaign. The apparent point of allowing the AFL-CIO and other "National partners" approval authority over each state's Coordinated Campaign plan was that once such approval was given, "each national partner will give their funding commitment to the state." Attachment 4 at DNC Bates No. 1272527. The September 12, 1996 memorandum from Rob Engel of the DCCC to Jim Thompson of the AFL-CIO concluded, in bold face type, "We request the AFL-CIO review these budgets and programs. If you approve them we ask that you encourage your affiliated unions to contribute to each congressional district coordinated campaign." Attachment 6 at FEC Bates No. AFL048-00675 (emphasis in original). A follow-up memorandum dated September 19, 1996 from DCCC consultant Joe Velasquez to Thompson was titled "Re: Request for Labor Money for DCCC Coordinated Campaigns" and

began, "Attached is our updated and improved request for your big bucks." Attachment 12 (AFL-CIO Bates No. 004523, 004524.)

Where requests or suggestions did not involve money, they involved communications by the AFL-CIO to its restricted class; for instance, the Arkansas Coordinated Campaign Plan states that "we will work with the AFL-CIO and the [Arkansas Education Association] to ensure that *their members* go to the polls early wherever possible." Attachment 8 (emphasis added). In another instance, and as already noted, the South Dakota Coordinated Campaign Plan called for "identification of every CAP and COPE member of each international" union.

2. Analysis

The investigation has produced evidence tending to demonstrate that through the AFL-CIO's status as a "national partner" of the Coordinated Campaign, both the individual state AFL-CIO federations and AFL-CIO headquarters itself had access to volumes of non-public information about the plans, projects, activities, and needs of the DNC, the DCCC, the state Democratic parties, and in some instances individual candidates for Federal office. Moreover, the evidence shows that the AFL-CIO had not merely access to, but authority to approve or disapprove, the DNC's and the state Democratic committees' plans for "Coordinated Campaign" activity.

Under the interpretation of the law put forward by the Commission in the *Christian Coalition* case and cases prior to it, the sharing of this much information about the potential recipient committees' plans, projects, activities and needs would have been more than sufficient to taint the independence of any subsequent election-related communications to the general public by the AFL-CIO. The Commission has previously noted that the Supreme Court, in *Buckley*, contrasted "prearranged or coordinated expenditures amounting to disguised

contributions" with "expenditures for express advocacy of candidates made *totally* independently of the candidate and his campaign." *Buckley*, 424 U.S. at 47 (emphasis added). Where an outside group has veto power over party committee activities that eventually result in more than 24 million individual voter contacts by phone or mail,

it is impossible to say that any communications made by either the outside group or the party committee have been made totally independently.¹¹

Indeed, this extraordinary degree of interconnectedness would appear to render the *Democratic committees'* communications to the general public "coordinated" with the AFL-CIO under the *Christian Coalition* definition of coordination, given that the plans of each state party and the DNC appear to have been subject to the approval of the AFL-CIO, and that that approval apparently came after a process of "substantial negotiation and discussion between" the DNC and/or the state parties, on the one hand, and the AFL-CIO and its state affiliates, on the other. But under no theory of the law, either prior to or after *Christian Coalition*, has coordination of a recipient political committee's own communications with a third party rendered the political committee's communications illegal.

Instead, the question in this matter is whether the *AFL-CIO's* communications to the general public were coordinated expenditures, and therefore prohibited contributions. The facts

¹¹ Moreover, given that in South Dakota, Arkansas, and probably other states, communications by the AFL-CIO or its member unions to their restricted classes appear to have been integral parts of the Democratic state committee's Coordinated Campaign plan, the provisions of 11 C.F.R. § 114.2(c) might come into play. Although a labor organization's communications to its restricted class are exempt from Section 441b's definition of "contribution or expenditure," 2 U.S.C. § 441b(b)(2), and therefore coordination of such communications does not turn them into prohibited contributions, Section 114.2(c) provides that such coordination "may be considered evidence that could negate the independence of subsequent communications to those outside the restricted class by the . . . labor organization or its separate segregated fund, and could result in an in-kind contribution" in the form of the subsequent communication

discovered to date do not appear to be sufficient under the *Christian Coalition* standard to show coordination of the AFL-CIO's communications. As noted, none of the Coordinated Campaign documents reviewed to date contain *any* unmistakable reference to *any* AFL-CIO communication to the general public. Accordingly, the documents do not reflect any request or suggestion by the DNC, or by any state party committee, or by any candidate for any specific communication, or any general program of communications, by the AFL-CIO. Nor is there anything in the documents that can be considered "substantial discussion or negotiation" over the contents, timing, location, mode, intended audience or volume of such communications.

In short, the investigation of the AFL-CIO's relationship to the 1996 Democratic Coordinated Campaign has developed no evidence to date of "expressive coordinated expenditures" by the AFL-CIO, as defined in *Christian Coalition*. Moreover, because the *Christian Coalition* analysis indicates that the AFL-CIO could obtain as much information as it wished about the plans, projects, activities and needs of the DNC, the DCCC, and state Democratic parties through the Coordinated Campaign approval process and through party funding requests without engaging in "substantial discussion or negotiation" over specific expenditures, we believe it unlikely that further investigation of the Coordinated Campaign would develop such evidence.

V. **OTHER DIRECT CONTACTS BETWEEN THE AFL-CIO AND FEDERAL CANDIDATES OR THEIR COMMITTEES**

1. **Denials by Authorized Committees of Contacts with the AFL-CIO Regarding AFL-CIO Communications to the General Public**

To date, the investigation has developed no concrete evidence that any of the AFL-CIO's most significant communications to the general public were made at the request or suggestion of any candidate or candidate's committee, or were made after substantial discussion or negotiation

with the committee concerning the communication's content, timing, volume, mode, location or intended audience. The AFL-CIO admits that some candidates or their committees requested or suggested that the AFL-CIO broadcast advertisements in their districts, but the AFL-CIO denies acting on the requests or suggestions. In a June 11, 1999 response to Commission interrogatories, counsel for the AFL-CIO stated:

Denise Mitchell, Deborah Dion [an assistant to Mitchell], and Steven Rosenthal each recall that during the 1996 election cycle he or she received a small number of telephone calls from federal candidates or their campaigns requesting that the AFL-CIO run issue ads in their districts. These individuals cannot recall the identities of the persons making these requests, the campaigns involved or the dates of the requests. In each instance, the requester was informed that the AFL-CIO could not discuss its plans relating to issue advertising with any candidate or campaign and in no instance was an issue advertisement run by the AFL-CIO in response to such a request.

Through informal interviews with a Commission investigator or through formal discovery responses, the Commission has obtained information from the committees of 28 Democratic candidates for U.S. House of Representatives in 1996, in some cases from the candidates themselves, and one independent candidate. In 21 of these 29 instances, the committees effectively denied, either in their initial discovery responses or in the course of informal interviews, that any contact occurred between the AFL-CIO and the committee concerning AFL-CIO communications to the general public.¹² In 11 of the 21 districts of these candidates, the

¹² The 21 committees are: Tom Allen for Congress, Crawford for Congress, Joe Cullen for Congress, Delahunt for Congress, Friends of John Arthur Eaves, Jr., Rieder for Congress, Jim Wiggins for Congress, Ed Crocker for Congress, Frieden for Kansas, Friends of Marty Mack, Don Stuart for Congress, and Charlie Watts for Congress, all of whom responded to Commission subpoenas and orders approved July 14, 1998, and all of whose responses are appended to the General Counsel's Memorandum in these matters dated December 3, 1998; Elect Kucinich to Congress, James Martin Davis for Congress, Bob Etheridge for Congress Committee, Ron DiNicola for Congress Committee and (with one minor exception described at the end of this report) Bernie Sanders for Congress Committee, all of whom responded to Subpoenas and Orders approved July 14, 1998, as modified following the Commission's December 8, 1998 determination to deny various Motions to Quash and take no action on others; and (Footnote continued on following page)

AFL-CIO engaged in at least moderately intensive broadcast advertising.¹³ Typical of the responses in substance, but most descriptive in tone, was the response of Rieder for Congress: "The candidate has no idea of how these ads came to be aired in the district. They came as a complete surprise, and we only knew about them when someone called the campaign office and said turn on the TV!" MURs 4291, *et al.*, Memorandum to the Commission, December 3, 1998, Attachment 6 at 6.

In eight instances, committees responded with less than complete denials. All eight of the committees, which are all respondents in these matters, are represented by the same counsel. Three of the eight responded to the Commission's Subpoenas to Produce Documents and Orders to Provide Written Answers approved July 14, 1998; in two of the three instances, the responses were to the Subpoenas and Orders as modified following the Commission's determination on December 8, 1998, to reject the committees' Motions to Quash. The responses of the Lampson for Congress Committee and the Bell for Congress committee both averred that "respondent is without sufficient information to state" how the ads in their districts came to be aired; the Lampson response further stated that respondent was "unaware of" any contacts between itself and the AFL-CIO regarding broadcast ads, while the Bell response said that "Respondent is without sufficient information to state" whether there were any such contacts. Attachments 14 (Lampson response) and 15 (Bell response). The response of the Walter Capps for Congress

Coopersmith for Congress, Adam Smith for Congress, Coffin for Congress, and the Connie McBurney for Congress Campaign Committee, each of which had at least one campaign staff person (or in some instances, the candidate) participate in an informal telephone interview conducted by a Commission investigator. An investigator also interviewed staff persons from Crawford for Congress. Some of these committees were respondents; others were non-respondent witnesses.

¹³ These were the districts in which candidates Allen (ME-1), Wiggins (GA-8), Mack (NY-25), Kucinich (OH-10), Davis (NE-2), Etheridge (NC-2), Coopersmith (WA-1), Smith (WA-9), Coffin (NV-1), McBurney (IA-4), and Bell (GA-10) stood for election.

committee to virtually every question posed by the Commission was, in essence, that the candidate had died, the committee was moribund, and the responding treasurer was not the treasurer in 1996 and had no personal knowledge with respect to the matters the Commission was investigating. Attachment 16 (Capps response). There was significant AFL-CIO broadcast activity in the Lampson, Bell and Capps districts.

The other five of the eight committees to respond with less than complete denials responded to the Commission's Subpoenas to Produce Documents and Orders to Provide Written Answers dated July 13, 1999. These five committees -- the Dan Williams for Congress committee, the Longabaugh for Congress committee, the Tierney for Congress committee, the Steve Owens for Congress committee, and the Darlene Hooley for Congress committee -- were specifically selected as discovery targets because of the high volume of AFL-CIO broadcast advertising in their districts. All were asked for "all documents that reflect, refer to, or relate to communications, conferences, or meetings between you or any person acting on behalf of your committee and any person known to you or your committee to be acting on behalf of the AFL-CIO" regarding a variety of subjects, including any AFL-CIO communications to its restricted class or the general public in 1995 or 1996. Each committee responded with the identical phrase: "Respondent does not believe it has maintained any documents responsive to this request."

Attachments 17-21.

This Office's initial assessment was that, although the denials were less than complete, it was unlikely that the committees had engaged in coordination with the AFL-CIO that met the *Christian Coalition* standard. That assessment was based on two factors. First, as noted, 21 other candidates or committees, including 11 from districts in which the AFL-CIO had engaged in at least moderately intensive broadcast advertising in 1996, had more completely denied any

contacts with the AFL-CIO at all concerning AFL-CIO communications to the general public.

Second, such evidence as the investigation had developed concerning transmission of candidates' plans, projects and needs to the AFL-CIO indicated that, as with the Coordinated Campaign, such information was most often transmitted in the context of requests for contributions of money, and it appeared that the AFL-CIO could get all the information it wanted about candidates' plans, projects, activities and needs in that context without discussing any specific expenditures by the AFL-CIO.

Nevertheless, in the interest of fully examining these matters, this Office contacted counsel for the eight committees in an attempt to obtain assurances that there had been no contacts between his clients and the AFL-CIO concerning the AFL-CIO's communications to the general public or, at the least, that counsel and his clients had conducted adequate searches to support their contentions that they had no responsive information. Counsel took far longer to provide this information than this Office anticipated, for a variety of reasons. *See generally* Attachments 22 and 23 (exchange of letters between staff and counsel). Nevertheless, all but one of the eight committees have now submitted affidavits, executed by the same individuals who executed the committees' original discovery responses, that state that to the best of each committee's knowledge "there were no contacts between persons at the Committee and individuals with the AFL-CIO regarding AFL-CIO issue ads and electronic voter guides during the time period in question." Attachments 24, 46-51. No further information has been submitted on behalf of the Walter Capps for Congress Committee.

In sum, 28 of the 29 authorized committees from which the investigation has obtained information have now denied *any* communications, much less those that might reach the level of coordination under the *Christian Coalition* standard, with the AFL-CIO concerning at least AFL-

CIO broadcast communications to the general public. As noted, documents concerning direct AFL-CIO contacts with candidates or their committees indicate that, as with the Coordinated Campaign, where there were contacts at all the contacts were generally about contributions of money. This Office possesses no documents or other information which it believes would be particularly helpful in challenging the committees' denials if further discovery was undertaken. Accordingly, this Office believes further discovery efforts directed to the 28 committees would not be likely to produce evidence of coordination, as the term is defined by *Christian Coalition*.

As for the Walter Capps for Congress committee, this Office finds it somewhat disturbing that the committee has not even explained what efforts it took, if any, to search the committee's records or to contact individuals who may have had knowledge that would have enabled the committee to provide substantive answers to the Commission's inquiries. This omission is even more disturbing in light of a document in the Commission's possession reflecting a contact between the Capps committee and the AFL-CIO Political Department concerning radio advertisements by Capps's opponent that criticized the AFL-CIO's advertising campaign. However, considering the lack of evidence of contacts between the AFL-CIO and any other congressional candidate's authorized committee about AFL-CIO communications to the general public, and considering Representative Capps's death in October 1997, ten months into his only term in Congress, this Office does not believe it would be an efficient use of Commission resources to pursue the outstanding questions regarding the Capps committee.

2. The January, 1996 Special Election for U.S. Senator from Oregon

As described in the First General Counsel's Report, shortly after AFL-CIO President John Sweeney took office in October 1995, the AFL-CIO devoted substantial resources to the January 1996 special election for U.S. Senator from Oregon; Sweeney and AFL-CIO Political

Director Steven Rosenthal stated in press accounts that the Oregon special election was a testing ground for the AFL-CIO's plans for political activity nationwide later that year. Amy Chapman, who had been political director of the Service Employees' International Union during Sweeney's presidency of that union, became campaign manager for U.S. Representative Ron Wyden, the Democratic nominee in the special election. The AFL-CIO has admitted in response to interrogatories that Rosenthal "had numerous communications with Amy Chapman and Gail Stoltz [also of the Wyden campaign] throughout December 1995 and January 1996 . . . involv[ing] the AFL-CIO's efforts to encourage union members to support Ron Wyden in the special election." Attachment 25 (Response of AFL-CIO to Subpoena to Produce Documents and Order to Provide Written Answers, MURs 4291 and 4328, May 22, 1998) at 5. These efforts included seven direct mail pieces and one flyer that were distributed, according to the AFL-CIO, only to members of the AFL-CIO's restricted class in Oregon or to subsets thereof. Attachment 25 at 7-8; Attachment 26 (AFL-CIO Bates Nos. 001654-001685). Although the disclaimer on the materials stated that they were authorized and paid for by the Oregon State AFL-CIO Committee on Political Education, a non-Federal committee, both the AFL-CIO and its Oregon affiliate admitted in responses to interrogatories that the mailers were produced entirely under the direction of staff from AFL-CIO headquarters, and were created by a vendor, The November Group, that was retained by the national AFL-CIO. Nevertheless, it appears the mailings and flyers were not distributed outside the AFL-CIO's restricted class, and restricted class communications are neither contributions nor expenditures, even if coordinated. 2 U.S.C. § 441b(b)(2)(A), 11 C.F.R. §§ 114.1(a)(2)(i), 114.2(c).

The AFL-CIO's efforts in Oregon also included a plan to have the AFL-CIO communicate to its members that it wanted them to communicate pro-Wyden messages to the

public, under the direction of the Wyden campaign. As noted in the First General Counsel's Report, Sweeney referred in his book *America Needs a Raise* to "labor walks" in which some of the "hundreds of union activists" who "volunteered for the Wyden campaign" would walk through their communities speaking with people on Wyden's behalf and passing out leaflets. The AFL-CIO admitted in response to Commission interrogatories that Dave Watson, identified as a regional director for the AFL-CIO Committee on Political Education, recalled "attending several AFL-CIO staff meetings which were also attended by Amy Chapman and Leigh Pate [of the Wyden campaign]. He believes . . . that the discussions focused on the status of the campaign and on the canvassing program using union volunteers." Attachment 25 at 3. The "canvassing program" was apparently a reference to the "labor walks." This Office conducted informal interviews with more than a dozen individual union members or their spouses who participated in the "labor walks." From their descriptions and from the information in the AFL-CIO's discovery responses, it appears that after communicating with the Wyden committee about its needs for volunteers, the AFL-CIO and its affiliated unions would then communicate those needs to their members; would encourage them to volunteer for the Wyden campaign; and would provide information about how they could go about doing so. The union members who volunteered to participate in the "labor walks" would then engage in canvassing under the direction and control of the Wyden committee, and would disseminate Wyden committee literature rather than AFL-CIO literature. All of the individual volunteers interviewed maintained that they were volunteers, that they did no work for the Wyden committee during their work time or on union time, and that they received no compensation of any sort for participating in the "labor walks."

Had the AFL-CIO communicated with the Wyden campaign about the campaign's needs for volunteers and for canvassing in particular locations, and then dispatched union members to canvass for Wyden disseminating AFL-CIO literature rather than Wyden committee literature, the AFL-CIO would have engaged in a communication to the general public that was coordinated with, and therefore an in-kind contribution to, the Wyden committee. The AFL-CIO is prohibited from making such contributions with funds from its general treasury. Moreover, had the AFL-CIO provided compensation to anyone for rendering personal services to the Wyden committee without charge to the committee, the payment of the compensation could be considered a contribution from the employing organization to the Wyden committee. 11 C.F.R. § 100.7(a)(3). However, from the evidence in hand so far, it appears most likely that neither of these scenarios occurred. The AFL-CIO evidently learned the plans, projects, activities and needs of the Wyden committee with regard to canvassing. It then communicated to its restricted class, urging its members to volunteer to assist the Wyden committee. The volunteers then apparently communicated with members of the public on behalf of and under the direction of the Wyden committee. Because the AFL-CIO's direct communication was to its restricted class; the communications received by the general public were Wyden committee communications; and because there is no evidence that any of the volunteers were compensated, it does not appear that the "labor walks" led to any violations of the Act.

3. The "Working Women Vote" Campaign

In a September 17, 1999 response to Commission interrogatories, the AFL-CIO provided information about an activity called the "Working Women Vote" campaign that had not previously been a focus of the investigation. The AFL-CIO stated that the campaign consisted of "a series of events throughout the country for the purpose of encouraging working women to

register to vote and to vote in the November election." Attachment 27 at 10. The AFL-CIO produced a document, Attachment 28 (FEC Bates No. AFL048-01044 through 01068), that appears to be a list of "Working Women Vote" events nationwide. The document, dated October 11, 1996, is marked "Draft-Internal Document" on each page, and the AFL-CIO asserts that "it is possible that one or more of the activities listed did not take place as described;" however, the document refers to some events that were scheduled to take place prior to October 11, 1996.

Among the events listed are several at which candidates for Federal office or their spouses appeared or were expected to appear.

The Commission's regulations exempt from the prohibition of 2 U.S.C. § 441b(a) candidate appearances on labor organization premises or at labor organization meetings, conventions or other functions under strictly limited conditions designed to ensure that the purpose of the event is to allow the candidate to address or meet the labor organization's restricted class and other employees of the labor organization, and their families. 11 C.F.R. §§ 114.3(c)(2), 114.4(b)(2). They also permit labor organizations to make registration and get-out-the-vote communications, or conduct registration and get-out-the-vote drives, that are directed at the general public so long as the communications or drives are not coordinated with any candidates or political parties, among other conditions. 11 C.F.R. §§ 114.4(c)(2), 114.4(d)(2). However, if the described events were essentially AFL-CIO sponsored rallies at which candidates or their spouses were allowed to communicate to the general public or, alternatively, if they were registration or get-out-the-vote drives directed to the general public that were coordinated with the committees of the participating candidates, they would not appear to qualify for the exemptions and, if paid for by AFL-CIO general treasury money, they could

have been illegal in-kind contributions from the AFL-CIO to the participating candidates' committees.

However, determining conclusively whether these events violated the Act would be difficult and would require a significant expenditure of Commission resources. The AFL-CIO maintains it has no information beyond what it has already produced that indicates whether the events actually took place, whether they were directed to the AFL-CIO's restricted class or the general public, or what the costs of each event were. Therefore, pursuing this line of inquiry would entail directing discovery to the participating candidates' committees and to each local contact person who was responsible for staging the events, and potentially following up with a number of depositions. Because the investigation did not develop information about the Working Women Vote events until relatively recently; because of the subtle but important differences between the types of violations that may have occurred in connection with the Working Women Vote events and the types of potential violations that have been the focus of this investigation to date; and, most importantly, because of the level of resources that would apparently be necessary to resolve the outstanding questions about the events, pursuing this strand would in many respects be akin to starting a new investigation. At this late date, this Office does not recommend starting a new investigation into 1996 campaign activity.

VI. POTENTIAL COORDINATION WITH WHITE HOUSE OF LATE 1995 AFL-CIO BUDGET ADVERTISEMENTS

A. Introduction

The investigation has developed evidence of one scenario in which there is some evidence that the AFL-CIO engaged in substantial negotiation or discussion with persons acting on behalf of President Clinton and Vice President Gore about the content, location, or other

details of a flight of advertisements. The advertisements at issue were an AFL-CIO television spot concerning the conflict between the Administration and Congress over the Federal budget that was broadcast in 17 congressional districts in December, 1995, and a similar radio spot that was broadcast at the same time in an additional six congressional districts. However, while the evidence indicates that the advertisement may have been coordinated with persons acting on behalf of the President – who was, at the time, a candidate for reelection – the evidence also indicates that, to the extent the advertisement was in connection with Federal elections at all, it was in connection with a number of elections to the office of U.S. Representative, and not in connection with the Presidential election.

B. Facts

1. The Advertisements

The television advertisement in question is entitled "Families," and it is reproduced at Attachment 3 of the First General Counsel's Report. In the script, the targeted Member of Congress is criticized for voting on November 20, 1995 "with Newt Gingrich and against working families" by voting "to cut Medicare, education and college loans . . . to give a huge tax break to corporations and the rich." The ad continues, "But President Clinton said no. He stood up for working families . . .," while showing a "full-frame shot of President Clinton signing veto at desk." The ad concludes by urging the viewer to "speak out . . . Let's tell Congressman [name], this time, don't vote for the wealthy special interests. This time, vote for America's working families." A graphic on the advertisement urged the viewer to "Call Rep. [name]" and provided an "800" telephone number. In response to the complaint in MUR 4307, which placed "Families" at issue, the AFL-CIO stated that a person who called the number was "greeted with a recorded message stressing the importance of 'standing up for America's working families,' was

asked for his/her name, address, and zip code, and based on that information was then connected to the Congressional office of his/her representative."

The advertisement was broadcast between December 5, 1995 and December 22, 1995 in the districts of 17 Members of Congress, all Republicans¹⁴ Attachment 29 (Executive Office of the President Bates Nos. FECL 00278 through 00280). An additional version, which did not mention any particular member of Congress, was broadcast on the Cable News Network.¹⁵ *Id.* at 00243. Moreover, radio advertisements with similar scripts were broadcast in the districts of an additional five Republican Members of Congress.¹⁶ *Id.* at 00241-42; Attachment 30 at Executive Office of the President Bates No. FECL 00132 (script).

During the period the television and radio advertisements were broadcast, the President and the Congressional leadership were engaged in high-profile and frequently acrimonious negotiations over the fiscal year 1996 budget reconciliation bill and several appropriations measures. As a result of the lack of success of these negotiations, much of the Federal government was shut down beginning December 16, 1995.

¹⁴ These were Reps. Jay Dickey (AR-4), Frank Riggs (CA-1), Andrea Seastrand (CA-22), Greg Ganske (IA-4), Helen Chenoweth (ID-1), John Hostettler (IN-8), Ed Whitfield (KY-1), Jim Longley (ME-1), Dick Chrysler (MI-8), Fred Heineman (NC-4), John Ensign (NV-1), Frank Cremeans (OH-6), Jim Bunn (OR-5), Van Hilleary (TN-4), Steve Stockman (TX-9), Rick White (WA-1), and Randy Tate (WA-9). FEC Bates Nos. AFL001-02050 through 02052. Except for Dickey, Chrysler, Heineman and Hilleary, all would be among the Members whose districts were locations of some of the most intense AFL-CIO advertising throughout 1996.

¹⁵ In the version of "Families" broadcast on CNN, "Congress," rather than "Our Congressman" with a visual graphic stating the specific Member's name, is criticized for voting "with Newt Gingrich and against working families," and the viewer is urged to "Call Congress." Attachment 41 at Executive Office of the President Bates No. FECL 00130. In addition to the generic version of "Families," the AFL-CIO concurrently broadcast advertisements on CNN that appear to have been what some might consider to be even closer to "core" issues advertising, featuring excerpts of the testimony of persons who participated in "public hearings" sponsored by the AFL-CIO in the autumn of 1995. *Id.* at 00133-34 (scripts), 00137 (description in Sweeney statement at news conference).

¹⁶ These were Reps. Michael Flanagan (IL-5), Jerry Weller (IL-11), Robert Ehrlich (MD-2), Peter Torkildson (MA-6), and Martin Hoke (OH-10).

2. The Contacts

At the end of 1995, Jennifer O'Connor worked in the White House as an assistant to Deputy White House Chief of Staff Harold Ickes. O'Connor testified before staff of the Senate Committee on Governmental Affairs that one of her responsibilities was to be a "liaison of sorts" between the White House and labor leaders. Attachment 31 (Senate Committee on Governmental Affairs, Special Investigation, Deposition of Jennifer O'Connor, October 6, 1997 ("O'Connor Senate Dep."), at 108.¹⁷ In a November 20, 1995 memorandum to White House Political Director Doug Sosnik and Deputy White House Political Director Karen Hancox, O'Connor wrote:

As I mentioned in an earlier memorandum, the AFL is planning a 1.1 million piece mailing to members and retirees, coupled with phone banks and "events" in 55 congressional districts.

Attached is a list of the 55 targets. The checked targets are the ones that will also potentially get radio and tv.¹⁸ Also attached is a letter from [AFL-CIO President John] Sweeney describing the plans, and a draft of the direct mail piece.

Gerry Shea [an assistant to Sweeney] asked for our comments by the end of business today, if we want to have input into this campaign.

After a paragraph that was redacted by the White House, O'Connor continued:

Please call/page me tonight or leave e-mail for me first thing in the morning if there is anything you want me to pass back to the AFL about the attached. They had asked me to get them any input by the end of today if we want to affect the direct mail message or list. We have more time to affect the television message and targets because they are not finalized yet.

Attachment 32 (FEC Bates No. 040-00524, 00526).

¹⁷ To our knowledge, the Senate Committee on Governmental Affairs has not yet made public all transcripts of depositions taken by its staff in connection with its campaign finance investigation.

¹⁸ All but four of the "checked" Members were eventually targets of the "Families" campaign.

Attached to the memo was a copy of a letter, also dated November 20, 1995, from Sweeney to "AFL-CIO Executive Council Members and Presidents of AFL-CIO Affiliated Unions," indicating that the content of the mail campaign to the AFL-CIO's restricted class, and of the television campaign that obviously would be seen by the general public, would focus on the budget reconciliation bill for fiscal year 1996 and the President's expected veto of the bill. Sweeney's letter said that the campaign had "several objectives," including "[k]eep[ing] the focus, and the pressure, on Congress to drop their tax breaks for the rich and restore money for Medicare, Medicaid, student loans and worker protections;" "[k]eeping the pressure on the President to hang tough;" "[e]ducating union members and the general public about the anti-working family bias of Republicans and the value of pro-family government programs;" and "[f]oster[ing] an understanding among political leaders, the media, and trade unionists of the immense amount of work unions have put into the fight against Gingrich & Co. since November 1994." The letter further noted that the 55 districts targeted for the mailing to union members "includ[e] the [National Committee for an Effective Congress] or Project '95 target districts for retaking the House." Attachment 33 (FEC Bates No. AFL040-00527, 00528).

On November 27, 1995, Ickes sent a memorandum to the President, with copies to White House Chief of Staff Leon Panetta and his fellow deputy chief of staff, Erskine Bowles, that contained a brief description of the AFL-CIO's plans, along with a statement that "the primary purpose [of the mail and television ads] is to support the President in connection with the budget negotiations and keep pressure on him to 'hang tough.'" The memorandum is stamped "The President Has Seen." Attachment 34 (FEC Bates No. AFL040-00532).

To date, the investigation has developed no direct evidence that the White House followed up on the AFL-CIO's invitation of input on the mail or advertising campaign.

However, in testimony to congressional investigators, both Ickes and Clinton-Gore '96 consultant Dick Morris recalled a meeting that took place late in 1995 or early in 1996 in the Roosevelt Room of the White House in which AFL-CIO ads may have been screened for White House and/or Clinton-Gore personnel. Morris testified to staff of the House Committee on Government Reform and Oversight that:

The purpose of the meeting was for the labor people to show us the ads that they had run and were planning to run, and I criticized their ads, because they failed to mention the balanced budget or tax cuts, and I felt they relied too much on rhetoric against tax breaks for the rich, which is something I was constantly opposed to our talking about.

They then invited me to coordinate my time-buying plan, our time-buying plans with them on a basis where, for example, they suggested we want to advertise in Vermont to go after Jeffords, and you don't care about winning Vermont particularly, so why don't we take Vermont, but you take, you know, Missouri, where it is a swing state. And I rejected it because -- first of all I rejected it partially because I felt it was not lawful, and secondly, because I felt that their media was not only not helpful to the Clinton campaign, but destructive . . .

[I]t should be noted that the request for coordination did not come from Mr. Ickes, it came from someone from the labor community.

Attachment 35 (Committee on Government Reform and Oversight, U.S. House of Representatives, Deposition of Richard S. Morris, August 21, 1997 ("Morris Dep. Tr.") at 87-88.)¹⁹ Ickes recalled "a meeting in which [Morris] graced us with a cameo appearance and spouted off some wisdom and then disappeared . . . my recollection is that there were people from the Hill as well as people from labor, and I think it was in connection with the budget fight." Asked whether there was any suggestion at this meeting that DNC or Clinton-Gore ads be "divided up such as states or Congressional districts" with the AFL-CIO, Ickes testified that

¹⁹ The excerpts of Morris's testimony that are attached to this report are from a transcript printed by this Office from the transcript that was posted on the Internet site <http://www.house.gov/reform/finance/cfdepo/> (Footnote continued on following page)

"They may – a lot of things were suggested in meetings like that and it could well have been that there were some suggestions. But my – I think that these ads were up and running and that the AFL-CIO just wanted to show us what they were running." Attachment 36 (Senate Committee on Governmental Affairs; Special Investigation, Deposition of Harold Ickes, Vol. 2, September 22, 1997 ("Ickes Senate Dep. Tr.")) at 190-194.

Inquiries to the AFL-CIO, the Executive Office of the President, and the DNC have produced no documents yet reviewed that refer unmistakably to this meeting. So-called "WAVES" records of entry to the White House complex show that Denise Mitchell, assistant to AFL-CIO President Sweeney for public affairs and the person identified in responses to the complaints in these matters as in charge of television advertising for the AFL-CIO, visited the White House on the mornings of November 30 and December 8, 1995. Attachment 37 (Executive Office of the President Bates No. FECL 0013.) Other documents indicate that Ickes was not present for the December 8 meeting. Attachments 38 and 39 (Executive Office of the President Bates Nos. FECL 00461, 00225).

On December 5, 1995, "Families" went on the air. Someone at the White House, although it is not yet clear whom, possessed a 160-page document produced by Greer, Margolis, Mitchell, Burns & Associates, which was then the AFL-CIO's media consultant, that contained scripts and targeting information, including dozens of pages of "spot buy summaries" showing the time and station of each single airing of the "Families" advertisement; the document was dated December 1, 1995. Attachment 40 (Executive Office of the President Bates Nos. FECL 00264 through 00424). A December 8 memorandum from Sosnik and O'Connor to the President

and Vice President forwarded the script of the ad and the identities of its targets. Attachment 41 (Executive Office of the President Bates Nos. FECL 00129 through 00137).

C. Analysis

It appears highly possible that the AFL-CIO's "Families" advertisement may have been coordinated with White House staff within the concept of "coordination" set forth in *Christian Coalition*. O'Connor's November 20, 1995 memorandum to Sosnik and Hancox demonstrates that the AFL-CIO invited the White House to engage in "substantial discussion or negotiation" over the content of the "Families" advertisement, as well as the AFL-CIO's 1.1 million piece mailing to its members. Although the investigation has not yet developed direct evidence that the White House took the AFL-CIO up on its invitation, it also appears highly possible that the November 30, 1995 meeting attended by Denise Mitchell may have at least provided an opportunity for the White House to do so. WAVES records indicate Mitchell attended meetings on November 30 and December 8; the November 30 meeting occurred before the "Families" ads were on the air, while the December 8 meeting occurred afterward. Ickes and Morris each recalled being at a meeting in the White House "during the budget fight" when AFL-CIO ads were screened, and where, at least in Morris's recollection, the possibility of coordination was at least discussed. Because a document indicates that Ickes was not at the December 8 meeting – O'Connor reduced to writing what she wished another White House staff person to pass on to Ickes from the meeting – then, of the two, it would appear that the November 30 meeting was likely the one Ickes and Morris recalled in their testimony to Congressional investigators.

Moreover, the "Families" advertisements appear to have been related, at least in part, to the 1996 congressional elections. Part of the advertisements' purpose was apparently legislative; the ads' content concerned specific legislation that was the subject of intensive, and very high-

profile, legislative activity at the time the ads were broadcast, and Sweeney's letter stated that among the purposes of the ads were to convince Congressional Republicans to remove provisions of the legislation that the AFL-CIO found objectionable and to convince President Clinton to "hang tough." However, the ads appear to have had an election-related purpose, as well. Sweeney's letter stated that another purpose of the advertisements was to "educate union members and the general public about the anti-working family bias of Republicans," and he took care to note that the 55 districts targeted for mailings to union members, which included the 23 districts targeted for television or radio spots, were all "on the NCEC or '95 Project target list for *retaking the House*" (emphasis added).

However, the potential coordination recounted here would not have transformed "Families" into in-kind contributions because there is no match between the candidate or committee with whom the advertisements may have been coordinated and the election with which the ads were in connection. Morris was a consultant to Clinton-Gore '96, and evidence from other matters under review by the Commission indicates that Ickes, although a member of the White House staff, acted with apparent authority over certain activities of the Clinton-Gore '96 committees and the DNC pertaining to the presidential campaign. Audit Referral 99-15/MUR 4713, First General Counsel's Report, January 11, 2000, at 39 n.39 ("it appears that no expenditure was made without Harold Ickes' approval" on behalf of the Clinton-Gore '96 Primary Committee). Thus, if there was coordination, it may have occurred with representatives of candidates in the 1996 elections for President and Vice President of the United States. However, as already described, the advertisements did not appear to be in connection with the presidential campaign, but in connection with the elections for U.S. Representative in the districts then held by the targeted Members of Congress.

As described in the First General Counsel's Report in Audit Referral 99-15/MUR 4713, the DNC was also broadcasting advertisements about the struggle between Congress and the President over the budget that the DNC had coordinated with White House and Clinton-Gore personnel. However, comparison of the DNC advertisements with the AFL-CIO's "Families" advertisements demonstrates that while the former were at least arguably related to the Presidential election, the latter were related to House elections. First, with the exception of the CNN spots, the "Families" spots were critical by name of specific, targeted House members. By contrast, the DNC advertisements that were on the air at the same time as "Families" named only one candidate for Federal office, President Clinton, and other advertisements in the same series referred only to Clinton, Speaker Newt Gingrich, and Senator Robert Dole, the eventual Republican nominee against President Clinton. Second, the "call" of the AFL-CIO advertisement asked viewers to call the targeted Member of Congress (or, in the CNN spots, to "call Congress"); by contrast, the DNC ads that ran concurrently simply extolled President Clinton and his policies. Third, the direct evidence and available inferences about the strategy behind the "Families" ad indicates that it was broadcast in connection with House elections; Sweeney's letter stated that the members who were targeted by "Families" were part of a larger group that were in the "NCEC or Project '95 target list for retaking the House." In addition, 13 of the 17 members who were targets of the "Families" television ad, as opposed to those who were targeted by radio or restricted class mail only, were the same 13 that would go on to be the subject of the maximum number of AFL-CIO broadcast advertising flights between late June and election day. By contrast, there is far less evidence that the AFL-CIO budget ads were in connection with the presidential election than there was about the DNC ads in AR 99-15/MUR 4713 - a case where the Commission either rejected or divided 3-3, depending on the

advertisement involved, this Office's recommendations to find reason to believe that the ads were coordinated with, and therefore contributions to, the Clinton-Gore '96 Primary Committee.

Thus, the weight of the evidence indicates that the "Families" ads had the dual purpose of influencing a legislative outcome and influencing several elections for U.S. Representative. The relatively much smaller reference to President Clinton within the text of the advertisements does not change this conclusion.

In short, because the "Families" ads apparently were, at least in part, related to several 1996 elections for U.S. Representative, and because they were paid for by the AFL-CIO from its general treasury, coordination of the ads with any candidate in those elections or his or her authorized committee would have resulted in prohibited in-kind contributions by the AFL-CIO to those candidates. But there is no indication that the ads were coordinated in any manner, under any theory, with candidates opposing the targeted Members of Congress. While the evidence indicates that the ads may well have been effectively coordinated with representatives of Clinton-Gore '96, neither President Clinton nor Vice President Gore were candidates in the House elections the advertisements were about. Therefore, even if the "Families" ads were coordinated with Clinton-Gore '96, that coordination had no legal effect under the Act.²⁰

²⁰ Evidence of additional contacts between the White House and the AFL-CIO about the AFL-CIO's plans for advertising or other political activity in 1996 was developed by this investigation or the investigation conducted by the Senate Committee on Governmental Affairs. On January 12, 1996, according to WAVES records, Denise Mitchell attended a meeting at the White House that a January 10 memorandum from O'Connor to other White House staff members stated would be "similar to" the earlier meetings "on the budget;" this meeting was three days before the AFL-CIO's "Too Far" advertisement, the script for which is reprinted at Attachment 4 of the First General Counsel's Report, went on the air. However, the "Too Far" advertisement appears to be even less in connection with the presidential election than "Families," in that President Clinton is not even mentioned. In two other instances – a November 15, 1995 Oval Office meeting between newly elected AFL-CIO officers John Sweeney, Linda Chavez-Thompson and Richard Trumka and the President, the Vice President, Labor Secretary Reich, and senior White House staff, and a July 1996 telephone conversation between Ickes and AFL-CIO political director Steven Rosenthal – the AFL-CIO's political plans for 1996 were discussed in general terms but the Commission's investigation has adduced no evidence that the contacts included any coordination that would meet the *Christian Coalition* standard. Finally, while the AFL-CIO appears to have conducted a series of briefings at the White House for White House (Footnote continued on following page)

VII. COMMON VENDOR SCENARIOS

A. Facts

The First General Counsel's report noted that three firms had acted as common vendors to both the AFL-CIO and to Democratic candidate and party committees. The most significant of these was Media Strategies and Research, Inc., a firm with offices in Washington, D.C. and Lakewood, Colorado.²¹ As noted, Media Strategies was time buyer for all of the AFL-CIO's broadcast advertisements after mid-June 1996. It also was the time buyer for the committees of three Democratic candidates for U.S. Representative in districts in which the AFL-CIO ran broadcast advertisements – James Martin Davis of Nebraska, Nick Lampson of Texas, and Bob Etheridge of North Carolina. As described in the First General Counsel's Report, documents attached to an amendment to the complaints in MURs 4438 and 4463 and to the complaints in MURs 4500 and 4513 indicated that in some cases the same individual at Media Strategies handled the time buying for both accounts. Subsequently, the investigation developed information that Media Strategies was also the time buyer for the committee of Democratic

staff concerning advertisements and other activities it conducted on the issue of the minimum wage in April and May, 1996, all of these briefings appear to have concerned advertisements that were already on the air or activities that were already underway at the time of the briefings. From that timing, it appears that the advertisements or other activities could not have been undertaken at the request or suggestion of the White House or Clinton-Gore, and were not the product of "substantial discussion or negotiation" between the AFL-CIO and the White House or Clinton-Gore.

²¹ The others were Greer, Margolis, Mitchell, Burns & Associates, Inc. and Peter D. Hart Research Associates, Inc./Garin-Hart-Yang Research. Greer, Margolis was both the creative consultant and the time buyer for AFL-CIO broadcast advertising until the AFL-CIO terminated its relationship with Greer, Margolis in the spring of 1996; it also produced a video of President Clinton's trip to Ireland for the DNC in late 1995 or early 1996, and after terminating its relationship with the AFL-CIO it acquired the Democratic Senatorial Campaign Committee as a client. Hart Research conducted a variety of nationwide surveys for the AFL-CIO in 1995 and 1996, and engaged in some test marketing of AFL-CIO "voter guide" advertisements; it also conducted a baseline poll and three tracking polls for Walter Capps, the Democratic nominee in the 22nd District of California. Inquiry about these vendors was less intensive after completion of initial discovery inasmuch as resources were thereafter focused on the period after the AFL-CIO and Greer, Margolis parted ways, and inasmuch as there was no indication from initial discovery that Hart Research shared any work it did for the AFL-CIO with the Capps committee or vice versa.

House candidate Mary Rieder of Minnesota, who ran in another district in which the AFL-CIO broadcast television or radio advertisements.

In response to the complaints, Denise Mitchell, the principal AFL-CIO point person for the ads, denied any discussion with Media Strategies about its work for the Davis, Lampson or Etheridge campaigns. She additionally denied even knowing that MSR was doing work for the Davis and Lampson campaigns until after receiving the complaints; the investigation has developed information that the AFL-CIO had gone off the air in Davis's district before the AFL-CIO was served with the relevant complaint. She also denied knowing that MSR was doing work for the Etheridge campaign until after the election.

Similarly, Jon Hutchins, the president of Media Strategies, submitted pre-"reason to believe" affidavits personally denying discussing anything about the firm's work for the AFL-CIO with the Davis or Etheridge committees, or their consultants, or anything about his work for the Davis and Etheridge committees with the AFL-CIO.

In discovery responses, both the Davis and Lampson committees denied any coordination through Media Strategies, so far as they knew. However, they disclaimed complete knowledge of the actions of their media consultants, who were their committees' principal contacts with Media Strategies. Between its response to the complaint in MUR 4513 and its responses to Commission interrogatories, the Etheridge committee has submitted an affidavit from its campaign manager that emphatically denies any contact with Media Strategies about the AFL-CIO's ads; affidavits from its Washington-based media consultants that state that they "did not know in what media markets AFL-CIO was purchasing television time", and a list of others, including Congressman Etheridge himself and some informal advisers to the campaign, who participated in phone calls with Media Strategies. Inasmuch as the investigation discovered

relatively late that Media Strategies had bought time for the Rieder committee, there have been no discovery inquiries concerning that work; however, the investigation has shown that the AFL-CIO's broadcast activity in that district was considerably less than in the Davis, Lampson or Etheridge districts.

B. Analysis

Section 109.1(b)(4)(i)(A) of the Commission's regulations provides that expenditures will be presumed to be coordinated when they are "made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee, or agent." In 1980, the Commission determined in an advisory opinion that a relationship between a time buyer, an outside organization, and a candidate that was very similar to the relationship between MSR, the AFL-CIO, and the candidate committees in these cases "would compromise" the outside organization's ability to make independent expenditures. Advisory Opinion 1979-80 ("Situation 4.") *Accord*, Advisory Opinion 1982-20 (citing AO 1979-80); *cf. FEC v. NCPAC*, 647 F. Supp. 987, 990 (S.D.N.Y. 1986) (in enforcement case in which committee that requested AO 1979-80 claimed reliance on two other "situations" in opinion, court noted that committee did not contest that "on its face the statute and relevant regulations forbid" similar conduct).

However, *Christian Coalition* has cast serious doubt on the continued validity of AO 1979-80's "Situation 4." In one of the fact patterns in *Christian Coalition*, the Commission alleged that an individual who was a volunteer for both the Coalition and a congressional campaign had essentially coordinated distribution of Coalition voter guides with himself based on his extensive inside knowledge of the campaign's plans, projects and needs. The court called

coordination with one's self a "veil-piercing approach to coordination," 52 F. Supp. 2d at 96, and declined to find coordination on the facts presented. While the court stated that the "veil-piercing approach . . . may be appropriate if an individual had more complete decisionmaking authority for both a corporation [or labor organization] and a campaign and the evidence indicated that corporate [or labor organization] decisions to make expressive expenditures were taken to assist the campaign," it found that "coordination cannot be inferred merely from the fact that the [individual] wore two caps." *Id.*

Thus, it appears that under the *Christian Coalition* standard, coordination of an "expressive" expenditure through a common vendor or agent can occur in only one of two ways: first, where the common vendor or agent has decisionmaking authority for both the purported contributor and the purported recipient; or, second, where the common vendor acts as an intermediary between the outside organization and the recipient committee, either by transmitting to the spender a request or suggestion by the committee that an expenditure be made or by acting as a go-between for exchanges that amount to "substantial discussion or negotiation" between the two sides of the transaction concerning the content, timing, location, mode, intended audience, or volume of the expenditure.

As with the fact pattern at issue in *Christian Coalition*, the theory of common-vendor coordination through Media Strategies expressed in the First General Counsel's Report was largely a theory in which it appeared that Media Strategies, as the agent of both the AFL-CIO and the candidate committees, might have engaged in coordination with itself. First General Counsel's Report at 66 ("[W]hile Hutchens avers that he was not *instructed* by either the AFL-CIO or his campaign committee clients to use information about MSR's work for them to the

benefit of the other, he does not say whether he or his employees used such information in that manner without instruction.”)

However, it does not appear from the evidence developed by the investigation that Media Strategies had the decisionmaking authority over AFL-CIO ad placements that is necessary to trigger the possibility of “veil-piercing” coordination under *Christian Coalition*. Instead, it appears that when the AFL-CIO wanted to run a flight of advertisements, Hutchens would prepare a “planning budget” and transmit it to Mitchell along with a request that she “let me know if this is what you had in mind.” *E.g.*, Attachment 42 (FEC Bates No. AFL001-02020). The “planning budgets” would describe for each targeted Member the media markets in which the ads would air, the gross ratings points to be bought, the target audience, and the estimated cost. *E.g.*, Attachment 43 (AFL-CIO Bates Nos. 000419-25). On at least some occasions, Mitchell would have comments. Attachment 44 (FEC Bates No. AFL001-02055). Media Strategies would then apparently place the AFL-CIO advertisements, and Hutchens would provide Mitchell with the actual costs incurred. *E.g.*, Attachment 45 (FEC Bates No. AFL001-02024). Although Media Strategies apparently had authority to negotiate on the AFL-CIO’s behalf with television and radio stations on price, *id.*, and may have had authority to determine on which stations and at which times of day the advertisements ran, the regular submission of the “planning budgets” to the AFL-CIO and Hutchens’ requests on such occasions that Mitchell “let [him] know what [she thought]” indicate that the AFL-CIO, and not Media Strategies, had authority to determine or approve the target audience, media markets, gross ratings points bought and medium (i.e., radio, broadcast television, or cable television) for each flight of advertisements, as well as, of course, how much money it was willing to spend. Therefore, it

does not appear that Media Strategies had sufficient autonomy to trigger "veil-piercing" coordination.

Neither does it appear that Media Strategies served as a "go-between" for any exchange of information between the AFL-CIO and any candidate committee that would amount to coordination under the *Christian Coalition* standard. It appears that Denise Mitchell exercised all of the AFL-CIO's decisionmaking authority over the placement of the advertisements, and, as noted, she averred in responses to the complaints that she did not know that Media Strategies was working for the James Martin Davis or Nick Lampson campaigns until after the AFL-CIO was served with the relevant complaints (which, in the case of Davis, was after the AFL-CIO went off the air in that district) and did not know that Media Strategies was working for the Bob Etheridge committee until after the election. If Mitchell did not know at times when it would have made a difference that Media Strategies was a common vendor, she could not have used Media Strategies as a conduit of information to or from the candidate committees. Moreover, none of the documents obtained in the investigation that contained communications between Media Strategies and the AFL-CIO mentioned the Davis, Lampson or Etheridge committees, and none of the documents obtained in the investigation that contained communications between Media Strategies and the candidate committees mentioned the AFL-CIO.

Accordingly, under the standard set forth in *Christian Coalition*, the evidence in hand is not sufficient to support a determination that the AFL-CIO coordinated with any candidate or party committee through Media Strategies, and this Office believes further investigation is not likely to produce evidence that would be sufficient.

VIII. OTHER ISSUES

Two other discrete factual scenarios described in the First General Counsel's Report have been the subject of little or no further investigation because the facts described in the First General Counsel's Report fully describe violations of the Act. One of these scenarios involves the broadcast by the Democratic Republican Independent Voter Education Committee ("DRIVE"), the separate segregated fund of the International Brotherhood of Teamsters, of radio advertisements that expressly advocated the defeat of U.S. Representative Nathan Deal of Georgia in the 1996 election. That scenario, and the analysis of it, was more fully set forth in the General Counsel's Brief in these matters directed to DRIVE dated March 24, 2000, and the General Counsel's Report in these matters dated April 18, 2000. On April 26, 2000, the Commission found probable cause to believe that DRIVE and C. Thomas Keegel, as treasurer, violated 2 U.S.C. § 434(b). Conciliation negotiations with DRIVE have been fruitful, and this Office expects to recommend in a separate report that the Commission approve a conciliation agreement with these respondents.

The second issue involves the coordination between the AFL-CIO and the authorized committee of Rep. Bernie Sanders (I-Vt.) of a canvassing operation that involved registration of voters and distribution of AFL-CIO handbills praising Sanders. As described in the First General Counsel's Report, a number of interns in the AFL-CIO's "Union Summer" program, operating out of Boston, Massachusetts, were transported to Rutland, Vermont, where they received information from the Sanders campaign about Rutland neighborhoods with low voter registration and the proper filling out of the Vermont voter's registration form; the interns then canvassed door-to-door in Rutland, passing out the handbills and attempting to register voters. First General Counsel's Report at 43-46. This activity appears to have been coordinated within the

Christian Coalition standard, but it also appears to have been *de minimis*. Information available in the complaint in MUR 4463, the responses to that complaint by the AFL-CIO and the Vermont State Labor Council, and discovery responses by the AFL-CIO and the Sanders campaign indicates that the AFL-CIO spent \$599 on the activity, with an additional \$145 spent by the AFL-CIO's Vermont state affiliate on food for the interns, and that the one-day canvass resulted in the registration of 76 voters.²² This Office recommends that the notification letters to the AFL-CIO and the Sanders committee contain appropriate admonishment language concerning this apparent violation.

IX. CONCLUSION

The First General Counsel's Report in these matters contains the following quotation from *Whatever It Takes*, journalist Elizabeth Drew's book about the 1996 Federal election campaigns:

To keep its "issue advocacy" program clean, the AFL-CIO wasn't supposed to be talking about it in any detail with the Democratic party election committees. But it was perfectly okay for the Party committees and the labor federation to talk specifics about where labor should spend its *PAC money*. The discussant with the political committees for the PAC and the non-discussant for the "issue advocacy" effort could be the same person – and often was. A[n unnamed] Democratic Party operative said, "The thing that made it easy for resources to be placed well was there were a lot of discussions with organized labor relative to targeting PAC money and those targets turn out to be the same that they would make other efforts in."

Elizabeth Drew, *Whatever It Takes* (1997) at 76-77 (emphasis in original), *quoted in* First General Counsel's Report at 58. This Office included the excerpt from Drew's book in the report as an example of the type of activity that under then-prevailing theories could have

²² The AFL-CIO's September 11, 1999 response to the Commission's most recent set of interrogatories indicates that there were other locations around the country where Union Summer interns engaged in voter (Footnote continued on following page)

amounted to coordination that would impair the independence of AFL-CIO communications to the general public. However, the type of information exchange described in the excerpt, so long as it did not stray into explicit and "substantial negotiation" over content, timing, location, mode, audience or volume, appears to be precisely what is permitted by *Christian Coalition*. Moreover, all of the evidence developed to date strongly suggests that whether or not Drew's description was accurate in its particulars, it was generally accurate in terms of the types of exchanges that regularly occurred between the AFL-CIO and Democratic party or candidate committees. Consequently, this Office is of the opinion that if the *Christian Coalition* standard governs these matters, further investigation of any strand of the investigation is unlikely to produce evidence of significant violations by the AFL-CIO or the committees with which it was in contact.

Accordingly, for the reasons stated herein, this Office recommends that, in the proper ordering of its priorities and limited resources, *see Heckler v. Chaney*, 470 U.S. 821 (1985), the Commission take no further action and close the files with respect to all respondents in these matters except the Democratic-Republican-Independent Voter Education Committee and C. Thomas Keegel, as treasurer.

X. RECOMMENDATIONS

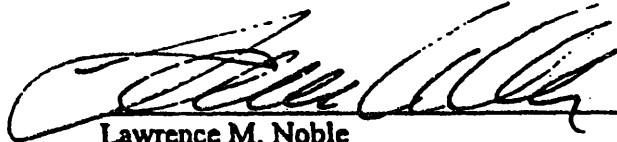
1. Take no further action and close the files with respect to all respondents in MURs 4291, 4307, 4328, 4338, 4463, 4500, 4501, 4513, 4555, 4573, and 4578 except the Democratic-Republican-Independent Voter Education Committee and C. Thomas Keegle, as treasurer.

2. Approve the appropriate letter, including admonishment language, directed to Sanders for Congress 2000 and Sara N. Burchard, as treasurer.

registration or GOTV activity in 1996, but the investigation to date has developed no other evidence of instances in which Union Summer activity was coordinated with any candidate or party committee.

3. Approve the appropriate letters directed to all other respondents in these matters with respect to whom the Commission determines to take no further action.

6/9/00
Date


Lawrence M. Noble
General Counsel

Staff assigned: Lawrence L. Calvert Jr.
April J. Sands
Tara D. Meeker

Attachments:

1. Document. "AFL-CIO Media Flights." produced by Media Strategies & Research
3. DNC document, "The 1996 Coordinated Campaign"
4. DNC document, "The Coordinated Campaign"
5. Memorandum, Steve Rogers to Jim Thompson, September 23, 1996
6. Memorandum, Rob Engel to Jim Thompson, September 12, 1996
7. Excerpts from Michigan Coordinated Campaign Plan
8. Arkansas Coordinated Campaign Plan
9. Idaho Coordinated Campaign Plan
10. South Dakota Coordinated Campaign Plan
11. Memorandum, David Billy to Jim Thompson and Tom Lindeafeld, September 10, 1996
12. Memorandum, Joe Velasquez to Jim Thompson, September 19, 1996
14. Discovery response, Lampson for Congress
15. Discovery response, Bell for Congress
16. Discovery response, Walter Capps for Congress
17. Discovery response, Dan Williams for Congress
18. Discovery response, Longabaugh for Congress
19. Discovery response, Tierney for Congress
20. Discovery response, Steve Owens for Congress
21. Discovery response, Darlene Hooley for Congress
22. Letter, Marc Elias, Esq. to staff, March 9, 2000
23. Letter, Office of General Counsel to Marc Elias, Esq., March 20, 2000
24. Affidavit of David Bell, April 18, 2000
25. AFL-CIO Discovery Response, May 22, 1998
26. AFL-CIO Oregon Flyers/Mailers
27. AFL-CIO Discovery Response, September 17, 1999
28. AFL-CIO document, "Working Women Vote Events"

29. Greer, Margolis, Mitchell, Burns & Associates document, "AFL-CIO: 4th Quarter 1995 Costs: Media Campaign Targeting Members"
30. Radio script, AFL-CIO "Families" advertisement
31. Excerpts from deposition of Jennifer O'Connor, Senate Committee on Governmental Affairs
32. Memorandum, Jennifer O'Connor to Doug Sosnik and Karen Hancox, November 20, 1995
33. Letter, John J. Sweeney to AFL-CIO member union presidents, November 20, 1995
34. Memorandum, Harold Ickes to the President, November 27, 1995
35. Excerpts from deposition of Richard S. Morris, House Committee on Government Reform and Oversight
36. Excerpts from deposition of Harold Ickes, Senate Committee on Governmental Affairs
37. White House WAVES records for Denise Mitchell
38. Electronic mail message, Jennifer M. O'Connor to Janice A. Enright, December 8, 1995
39. Memorandum, Harold Ickes to the President and Leon Panetta, January 2, 1996
40. Greer, Margolis, Mitchell, Burns & Associates document, "AFL-CIO: Television and Radio Campaign, December 5th-11th 1995: The Budget Battle"
41. Memorandum, Jennifer O'Connor and Doug Sosnik to the President and Vice President, President, December 8, 1995, with attachments
42. Fax transmission, Jon Hutchens to Denise Mitchell, June 24, 1996
43. Media Strategies & Research document, "Early September Planning Budget for the Education Issue Flight"
44. Fax transmission, Jon Hutchens to Denise Mitchell, June 14, 1996, with notes from Mitchell and apparent retransmission to Hutchens, June 17, 1996
45. Fax transmission, Jon Hutchens to Denise Mitchell, June 26, 1996
46. Affidavit of Robert S. Sande, April 27, 2000
47. Affidavit of Steve Owens, April 27, 2000
48. Affidavit of Roy Gelineau, Jr., May 3, 2000
49. Affidavit of Mark Longabaugh, May 15, 2000
50. Affidavit of Jacquelyn Davis, May 31, 2000
51. Affidavit of Dan Williams, May 5, 2000